



JULY 14. 1729.

A N S W E R S

T O

Mr. MACKENZIE's Condescendences in the Rank
and Dignity of Earls, in the Competition betwixt
him and the Lord FRASER of LOVAT.



IN answering the Condescendences brought by
Mr. *Mackenzie*, against the Lord *Lovat*, it
will be necessary to observe, That, in case any
Instance shall be found sufficiently vouched,
(as the Pursuer knows none) of the Digni-
ty of Earldoms held or possessed by Females,
it must have been by particular provifionary clauses, being
contrary to the regular Feudal Custom of *Scotland*, in so
much, that from the Reign of King *Robert Bruce*, till that
of King *Charles I.* mostly all Creations of Earls, whether
by Charters of Erektion, Investiture in Parliament, or Let-
A ters

ters Patent, have been to Heirs-Male, exclusive of Females. 'Tis further observable, That the Marriage of the Heir-Female, even of those more ancient Dignities, did not make the Husband *comes*, *ratione curialitatis*, till he was invested in the Dignity by Cincture, and other Rites of Creation; which gave him a Right to the Honour, even exclusive of his own Son, after the Mother's Death, and was a new Creation to the Husband himself. We proceed then to answer the Instances *separatim*, as they are set down in the Condescendences.

Earl of *ANGUS*.

As to the Instance of *Matilda*, Daughter and Heir of *Malcolm* Earl of *Angus*, marrying *Sir Gilbert de Umphravile*, we acknowledge the Fact; but refuse that the Husband was *comes ratione curialitatis*, till he was *de novo* created and invested in the Earldom, *per cincturam gladii comitatus*, as the Custom was, which was a new Creation to himself; for we shall have occasion, in answering these Condescendences, to show, that, in many Instances, the Husband of the Heir-Female of an ancient Earldom, was never *Comes*, nor his Wife *Comitissa*, if the Husband had not the Favour to be invested in the Honour himself; nor are they ever otherways designed, than *Dominus* and *Domina* of the *Comitatus*, which is no more, than the Proprietor of the Estate of the Earldom. Upon the Forfaulture of *Sir Gilbert de Umphravile*, Earl of *Angus*, by King *Robert I.* the Earldom came to the Family of *Stuart*.

Earl of *ANGUS*.

SIR *Alexander Stuart of Buncle* was created Earl of *Angus*. The Erection of the Earldom to him, was, without doubt, in the ordinary Course of other Creations at that Time, which are all to the Heirs-Male of the Person's own Body, honoured with the Dignity, as shall be shown in the Instances of the Earls of *Carrick* and *Murray*, which are the only two Erections of Earldoms at that Time, we have upon Record. The Male-Line of *Alexander* Earl of *Angus* failing in his Grandson *Thomas* Earl of *Angus*, his Estate came to his Sister Lady *Margaret Stuart*; she married *Thomas* Earl of *Mar*, who, upon that, according to the Custom of that Time, has been invested in the Honour of *Comes de Angus*; and the Lady his Wife, following the Rank of her Husband, calls herself *Comitissa de Mar & Angus*: She afterwards resigns the Lands of the Earldom of *Angus* to *George Douglas*, her Son, and to the Heirs-Male of his Body, *anno* 1389. But that of itself did not make him Earl of *Angus*; for, in an original Contract, yet extant amongst the Writs of the Family of *Douglas*, betwixt this *George Douglas* and the Lady *Mary*, Daughter to King *Robert III.* dated the 24th of *May* 1397, he is there called Lord of *Angus*: He has been soon after that invested in the Honour, by Cincture and other Rites, as usual; for the Duke of *Douglas* has in his Custody, a Charter, of the Date the 24th of *May* 1398, by King *Robert III.* *Dilecto filio nostro Georgio Douglas Comiti Angusiæ, & Marriæ sponsæ suæ, filiæ nostræ carissimæ*; so that this, we say, was a new Creation to the Earl of *Angus*, and to the Heirs-Male of his Body for ever.

Earl

Earl of *ATHOLE*.

The Earldom of *Athole* being a very ancient Erection, is a strong Presumption, that it was a masculine Fie, and to Heirs-Male; but that, by some special provision, in Failure of Males, the Estate went to the Heir of Line, tho' the Dignity did not; and 'tis observable, that neither *Isabel* Countess of *Athole*, nor any of these Ladies, that were the Heirs of ancient Earldoms, are called Countesses, till after their Marriage, that the King has been pleased sometimes to create their Husbands Earls, by Cincture of the Sword of the Earldom, which has been the Case of *Thomas de Galouya*, who married the Heir, or at least one of the Co-heirs of the Earldom of *Athole*, who, upon his Marriage, has got an Investiture, as the Manner was: But at the same Time, we have two Earls of *Athole*, this *Thomas de Galouya Comes Atholiæ*, and *Allanus ostiarius regis comes Atholiæ*, which must have been by another new Creation. That *Allanus ostiarius* is Earl of *Athole*, is instructed from the same Authority that Mr. *Mackenzie* vouches the Instance, the Peerage of *Scotland*, and the Chartulary of *Arbroath*; for there is a Grant by *Allanus ostiarius regis comes Atholiæ*, of the Wood of *Terpbeach*, which had been formerly given them by *Thomas de Lundin ostiarius regis, pater suus*, which King *Alexander* ratified by his Charter the 12th of October, the 19th Year of his Reign, anno 1233, and is the Year after *Fordon* marks the Death of *Thomas de Galouya comes de Athole*. From so irregular a Peerage as this, nothing can be inferred against the Lord *Lovat*; and as for the Monks of *Arbroath*, they gave the Title of *comes Atholiæ* to them both, in the Donations they got from them. If *Patrick de Galouya* was Earl of *Athole*, it has been by Succession from his Father, who had the Title, and although, upon his Death, in 1241,

David

David Hastings, who had married *Ferlithe* his Aunt, the Mother's Sister of this Earl, & *accepit comitatum ejus*; That is no more, but that he got the Lands, and afterwards King *Alexander II.* invested him with the Sword of the Earldom; and the Lady his Wife is never called *Comitissa de Athole*, till she was Sir *David Hastings's* Wife; and in her Widowity, following the Condition and Rank of her Husband, calls herself *Comitissa Atholiæ*, in a Donation by her to the Abbacy of *Coupar*, of the Lands of *Denfurther*, *pro salute animæ suæ*, & *pro anima Domini David de Hastings*, *quondam viri mei*, *comitis Atholiæ*. The original Charter of this is in the Advocates Library. As for the transmitting the Dignity to the *Strathbolgy* People, by *Ada* his Daughter, upon the Authority of Sir *James Balfour's* Collections, nothing can be inferred, since these Papers are so very loosely write, and for the most Part contradicted by original Charters, which are the only sure Guides to direct us in these Points of Fact: And admitting that *John de Strathbolgy* did marry *Ada* the Daughter of *David* Earl of *Athole*, he might have the Favour, considering he was a Nephew of the great House of the Earls of *Fyfe*, to be invested in the Dignity of Earl of *Athole*, which 'tis plain was a common Practice at that Time.

Earl of *ATHOLE*.

IN Answer to this Instance, we must go back to the original Creation of Sir *John Stuart*, uterine Brother to King *James II.* who was created Earl of *Athole*, by Investiture, in the 1457. for Mr. *Rymer*, in the *Fædera* that Year, mentions him as *comes Atholiæ*, and one of the Conservators of a Peace with *England*, which was at that Time concluded. He is designed in a Charter by King *James II.* in the 1460, in the publick Records of the Great Seal, Book 6. *Carta 97. Dilecto fratri nostro Johanni Stuart co-*

miti Atholiæ, terrarum Domini de Balveny, dated 24th March 1460. There is also a Charter under the Great Seal of King James III. in the Registers of the Great Seal, to his Uncle, de toto & integro comitatu Atholiæ, & terris ejusdem comitatus, exceptis terris de Drumquhaile & Drumquhyle, & hæredibus suis masculis, de corpore suo legitime procreatis seu procreandis, quibus deficientibus, nobis & hæredibus nostris reversuris. 'Tis dated 18th of March 1480. Book 5. Carta 1. It will be allowed, both the Estate and Dignity was established in the Male-Line of this Earl of Athole. The fourth Earl from him, was John Earl of Athole, who died at Perth the 28th of August 1594. and though he left four Daughters, the Dignity failed, and the Earldom of Athole returned to the Crown. Dorothea his eldest Daughter, was married to William Earl of Tillybardin, but was never Countess of Athole; Mary, to James Earl of Athole and Lord Innermeath; Jean, to Henry Lord Saintcolm; and Anne, to Andrew Lord Stuart of Ochiltree: But the Honour did not ly long dormant; for his Majesty King James VI. upon a Recital, that the Earldom of Athole had fallen back to the Crown, by the Death of John Earl of Athole, without Heirs-Male, he makes and creates John Lord Innermeath Earl of Athole, because he was of the same Sirname and Blood with the former Earls, & hæredibus masculis, de corpore suo legitime procreatis seu procreandis; quibus deficientibus, nobis nostrisque successoribus libere revertend. Apud Haliroodhouse, sexto die mensis Martii 1595. The Charter is in the Register of the Privy Seal, Book 6. Carta 130. This John Lord Innermeath was succeeded in the Honour of Earl of Athole, by James Earl of Athole his Son, who married Mary second Daughter of John the fifth Earl of Athole; but dying without Issue, the Honour extinguished by his Death, but was again revived by King Charles I. in the Person of John Earl of Tillybardin, after he had served himself Heir of Line to his

his Grandfather *John* the 5th Earl of *Athole*, by a new Patent, upon the Narrative, That the Honour and Dignity of Earl of *Athole*, had continued in the Posterity of *John* Earl of *Athole*, uterine Brother to King *James* II. till the death of *John* Earl of *Athole*, his own Grandfather, who left four Daughters behind him, the eldest of which was *Dorothea* Countess of *Tillybardin*, Mother to *John* Murray, whom his Majesty now creates Earl of *Athole*, Idcirco, the Patent bears, *nos de novo damus, concessimus & contulimus, tenoreque presentium damus, concedimus & conferimus dignitatem, stylum & honorem comitatus Atholiæ, Joanni Murray, nunc comiti Atholiæ.* This Patent is recorded in the Registers of the Great Seal, last of February 1629. Book 52. Carta 88.

BUCHAN.

Sir *William Cuming*, who married *Margaret*, Daughter of *Fergus* Earl of *Buchan*, was not by Courtesy Earl of *Buchan*; for he is designed at first, *Willielmus Cuming de Buchan*; but is afterwards *Comes de Buchan* in the *Fœdera*, anno 1220. and so has been created and invested by King *Alexander* II. His Grandson *John* Earl of *Buchan* dying without Issue Male, the Dignity became extinct: But there is not the least Vestige of a Forfaulture of the Family.

STUART Earl of BUCHAN.

The Charter of Erection of the Earldom of *Buchan*, to *John Stuart* of *Coule*, by the Duke of *Albany* his Father, defeats this Instance; for by the original Grant in the laigh Parliament-house, amongst other old Writs that are not in the Books, but in single Charters, and bears Date 20th September 1406. the Earldom is granted to him & *heredibus masculis, de corpore suo legitime procreatis seu procreandis; quibus deficientibus, Andree senescallo fratri suo germano, & heredibus*

dibus masculis de corpore suo legitime procreandis ; quibus deficientibus, Roberto senescallo fratri suo & heredibus suis masculis de corpore suo legitime procreandis ; which failing, to return to the Duke himself: So that upon the Earl of Buchan's Death in the 1424. the Lady Seton, his Daughter, could have no Right to the Earldom, for that devolved to Murdoch Duke of Albany, as Heir-Male to John Earl of Buchan his Brother, and came to the Crown by the Duke's Forfaulture; where it remained till the 1431. it was given by King James I. to George Earl of March, after he was forfaulted of the Earldom of March, and upon that, as Fordon observes, was *percinctus in comitatum de Buchan*, girt with the Sword of the Earldom. His Son enjoyed the same Honour till his Death. As for the Family of Seton's assuming and quartering the Feodal Arms of the Earldom of Buchan, in their Atchievement, that was no more than to show their Descent in Blood from the noble Earl of Buchan that was slain at Vernoil, as hath been said. There is no Authority that the Lord Seton or his Lady got any Gift of Pension from the Crown, in lieu of their Right to the Earldom of Buchan, since plainly they had none by the original Grant to the Earl himself, which was expressly limited to the Heirs-Male of his own Body.

STUART Earl of BUCHAN.

Sir James Stuart of Auchterhouse was invested in the Earldom of Buchan, by King James III. in the 1469. Afterwards he resigns the Earldom, and gets a new Grant to himself, and the Heirs-Male of his Body; which failing, to return to the Crown. The Charter is in the Registers of the Great-Seal, Book 10. Carta 35. and bears Date the 12th of October 1478. John Earl of Buchan his Grandson, although he had two Sons, John Master of Buchan, and James Stuart, called afterwards Master of Buchan also, altered

altered the Investitures of his Estate, from Heir-Male to Heirs of Line. For there is a Charter under the Great Seal, by Queen Mary, to John Master of Buchan, Son and Heir apparent to John Earl of Buchan, of his Father's whole Estate, heritable Offices, &c. and to his Heirs and Assignies whatsoever, dated the 4th of August 1546. Book 3. Carta 138. This Master of Buchan was killed at Pinky, 10th September, 1547. leaving only one Daughter Christiana, who was served Heir to her Father, the 14th August, 1550, as appears from her Retour, in the Lord Lovat's Hands. Upon that she is designed, *Christiana Feoditaria comitatus de Buchan*; and after her Grandfather's Death, in the 1562. calls herself *Comitissa de Buchan*. She married Robert Douglas, second Son to Robert Douglas of Lochlevin, who was not upon that *comes de Buchan*; for in a Charter in the Register of the Privy Seal, dated the 20th December, 1563. there is an Apprising of the Estate of Buchan, in Favours of James Earl of Murray, *quæ fuerunt Christianæ comitissæ de Buchan hereditariæ, et magistri Roberti Douglas, ejus conjugis, pro suo interesse*. It is plain, That Mr. Douglas was not Earl by Courtesy, nor is he Earl in the 1566, several Years after his Marriage, or ever till the Earl of Murray, his uterine Brother, was made Regent, that he is found sitting in Parliament, as Earl of Buchan, 15th December, 1567. But how he came by the Honour, whether by Investiture of the Regent, or by being summoned to Parliament as Earl of Buchan, does not appear. James Earl of Buchan, his Son, left only a Daughter, Lady Mary Douglas, who married James Erskine, eldest Son to John Earl of Mar, Lord High Treasurer of Scotland, by the Lady Mary Stuart Countess of Mar, Daughter of Esmae Duke of Lennox, who, upon his Marriage, is called Earl of Buchan; after which the Right of Succession to the Earldom of Buchan was, by a Charter under the Great Seal, dated the 22d of March, 1617. Book 48. Carta 182. proceeding on the Lady's Resignation, limited to their Heirs-Male; which failing, to the Heirs-Male whatsoever, of James Earl of Buchan :

chan: But his Lordship, it seems, did not care to have his Peerage stand upon the Foundation of a Female Succession; and therefore he procured a Resignation from the Heir-Male of *John* the third, Earl of *Buchan*, there designed, *Jacobus Stuart filius & heres quondam Jacobi Stuart Magistri de Buchan designati*. And, upon this Resignation, he got a new Charter under the Great Seal, the 25th of November, 1625. Book 51. Carta 80. of the haill Patrimony and Earldom of *Buchan*, all *de novo*, erected into an Earldom, to himself, and the Countess his Wife, in Liferent, and to *James* Lord *Auchterhouse*, their Son and apparent Heir, in Fie, and to the Heirs-Male of his Body; which failing, to the Heirs-Male of the Earl and the Lady; and these failing, *heredibus masculis, & assignatis dicti Jacobi comitis de Buchan quibuscunque*. By Virtue of which Settlement, *David* Lord *Cardross*, tho' his Lordship is not descended of the Blood of the former Earls of *Buchan*, either of the Line of the *Stuarts* or the *Douglasses*, yet succeeded, as Heir-Male, to the Dignity, upon the Death of *James* Earl of *Buchan*, his Cousin, in the Year 1695.

C A I T H N E S S.

SIR *James Balfour's* loose Collections can never be thought of any Authority, to support this Instance, since he gives no Voucher. Besides, it appears, That *Magnus comes Cathanie & Orcadie*, who is in the famous Letter to the Pope, 1320. died without Issue-Male, and that his Dignity became extinct, though he had Heirs-Female, amongst whom his Estate was divided. There is, for instructing this, a Charter in the Rolls of King *David II. Mariæ le Chine sponsæ quondam Joannis de Douglas*, of a fourth Part of the Earldom of *Caithness*, Book 1. Carta 130. There are other Parts of the Earldom of *Caithness*, to which one *Alexander le Aird* had Right, from *Matilda de Strathern matre sua*. This appears

appears from a Charter in the Rolls of King *Robert II.* to *David* Earl of *Strathern* his Son, in the 1371 : So that these Heirs of Line, although they had Right to the Estate, they had no Claim to the Dignity, which extinguished with their Father : For, upon a Purchase from *Alexander l' Aird*, *David* Earl of *Strathern* calls himself, *Comes de Strathern, & de Caithness*, being girt with the Sword of that Earldom, as well as he had been created Earl of *Strathern*. This is vouched from a Charter in the Lord *Rollo's* Hands, by *David* Earl of *Strathern* and *Caithness*, to *John Rollo*, of the Lands of *Findony*, dated the 13th of *February*, 1380. Upon his Death, the Earldom of *Caithness* devolved on *Walter Stuart* of *Brichen*, his Brother German and Heir-Male, by whose Forfaulture it came to the Crown, in the Year 1438.

Earl of CARRICK.

DUNCAN, Son of *Gilbert de Galloway*, got the Country of *Carrick* erected to him in an Earldom, by King *Alexander II.* in the 1224. *Neil* Earl of *Carrick* his Son, left only a Daughter *Margaret*, who was married to *Adam de Kilconceath*, who upon that has been invested in the Earldom, and is *comes de Carrick* ; but he dying without Issue, the Lady married a second Husband, *Robert de Bruce*, called the Noble ; and he being a gallant brave Man, and the King's near Relation, was *cinctus gladio comitatus*, but not by Right of Courtesy, since both Dignity and Estate is in his Person, exclusive of his Son, even after his Mother's Death, For vouching this there is, in the excellent Collections, published by the learned Mr. *Rymer*, a Supplication, as it is called, to King *John*, in a Parliament at *Stirling*, anno 1292. wherein *Robertus de Bruce comes de Carrick*, begs Leave to resign the Earldom of *Carrick* in the King's Hands, in Favours of his Son *Robert Bruce*, and which belonged to him in Right of his Mother, *ratione quondam Margaretæ comitissæ de Carrick matris suæ*. Upon his
being

being seased, and girt with the Sword of the Earldom, he is designed *Robertus de Bruce comes de Carrick*, when a Commission is directed to him, to receive the Inhabitants of the *Merse* to the King's Peace, in 1296. The Title of Earl of *Carrick* this immortal Person bore, till he became King of *Scotland*, by the Name of *Robert I.* anno 1306. After which, in the 1312. he gave to his Brother, Sir *Edward Bruce*, the Earldom of *Carrick*, *Totum comitatum de Carrick, & heredibus suis masculis de corpore suo, heredum suorum masculorum exeuntium, & tantummodo per lineam directam & masculinam continuo descendentibus.* This Charter is in the Rolls of King *Robert I.* Upon his Death, in 1318. without any lawful Issue, as *Fordon* remarks, the Earldom of *Carrick* reverted to the Crown; and was afterward given to *Alexander Bruce*, whom *Fordon* mentions, as Earl of *Carrick*, and was slain at the Battle of *Halydonhill*, in 1333. By *Eleanora de Douglas*, called afterward *Eleanora de Bruce*, comitissa de *Carrick*, his Wife, he left a Daughter, to whom, it seems, his Estate came: She married Sir *William Cuningham*, who was thereupon stiled, *Dominus de Carrick*, but never Comes. For vouching this, there is a Charter in the Rolls of King *David II.* confirming a Grant by him, as *Dominus de Carrick*, *Jacobo de Lickpirick*, of the Half of the Lands of *Polquharn* in *Kyle*, the 33d Year of the King's Reign: But she dying without Issue, it returned a second Time to the Crown, where it remained, till *John Stuart*, Son and Heir apparent to *Robert* Earl of *Strathern*, got the Earldom of *Carrick* from his Grand-uncle, King *David II.* He is designed, *Comes de Carrick, ac Dominus de Kyle*, in a Charter, in the Laigh Parliament House, not in the Books, but in a single Writ, confirming and ratifying a Charter granted by *Joannes de Graham*, *Dominus de Torbolton*, of the Patronage of the Church of *Torbolton*, to the Minister of *Feal*, dated the 5th of *August* 1368. This Title
of

of *comes de Carrick*, he bore, till he came to the Crown, by the Name of *Robert III.* in the Year 1390.

Earl of *F Y F E*.

IT is acknowledged, That *Duncan*, the last of the Male-line of the *Macduffs* Earls of *Fyfe*, died after the Battle of *Durham*; and that he left one Daughter, *Isabella de Fyfe*, who married first Sir *William Ramsay*, who has been invested, and *de novo*, created *comes de Fyfe*, upon King *David's* Return from *England*, anno 1356. For we find him then designed, *Willielmus comes de Fyfe*. For Proof of this, there is a Charter in the Records of King *David II.* *Johanni de Allancrum*, of certain Lands, within the Barony of *Crawford Lindsay*, in which *Willielmus comes de Fyfe* is a Witness, dated the 12th of *April*, 1357. This *William* Earl of *Fyfe*, dying without Issue, the Lady his Widow married a second Husband, *Thomas Bisset* of *Upsettlington* and *Glasclune*. There is a Charter under the Great Seal in the Rolls, confirming a Marriage Settlement, *inter dominum Thomam Bisset & Isabellam de Fyfe dominam ejusdem*; whereby he provides the Lady in a Liferent of the Lands of *Glasclune* and *Stronrie*, &c. 10th *January* 1362. Upon the Marriage, Sir *Thomas Bisset* gets a Charter from King *David*, *de toto & integro comitatu de Fyfe, & heredibus suis masculis, inter ipsum & Isabellam de Fyfe legitime procreandis*; which failing, to return to the Crown, 8th of *June* 1362. The Charter is in the Rolls: But although we see that this Lady, who was the Heir of the Estate of the greatest Earldom of any other in the Kingdom, containing the greatest Privileges; yet the Honour did not come to her second Husband, though he had the whole Earldom of *Fyfe*, the Dignity was in the King's Hands, and at the Sovereign's Disposal, to give it or not as he had a Mind: But having never obtained an Investiture into the Title of *comes*, he never used the Designation

signation of Earl : So that it is plain, whenever she is designed *comitissa de Fyfe*, it was in Right of her first Husband, who was *comes de Fyfe*, by Virtue of his own Investiture ; for, if it had been by Courtesy, Sir *Thomas Bisset* would have had Right to be *comes de Fyfe*, as well as Sir *William Ramsay*. She married a third Husband, *Walter Stuart* Son to the Earl of *Strathern*, afterward *Robert II.* who died before he was invested, and is never designed *comes de Fyfe*. After his Death, she made a Resignation, in Favours of her Brother in Law, the Earl of *Menteith*, of the *comitatus de Fyfe*, reserving a Liferent of 145 *L. Sterling*, for her Life, the Penult of *March 1371*. But that Resignation could not have conveyed the Honour of Earl of *Fyfe* to him, more than the Charter of the *Comitatus* had done to Sir *Thomas Bisset*, until he has been *percinctus gladio*, created Earl of *Fyfe*, in the 1373, for then we find him designed, *Comes de Fyfe & Menteith* ; and he used both these Titles, till he was created Duke of *Albany*, in the 1399.

Earl of LENNOX.

WAS an Erection of an Earldom, as early as the Time of King *William*, to *Alwin M'Arkil*, who, in many ancient Deeds of that Time, is designed *Alwinus Comes de Levenax*. It is pretty clear, that the Male Line of those ancient Earls of *Lennox*, continued till the 1372, that *Donald* Earl of *Lennox* dying without Issue-Male, he left a Daughter *Margaret*, who was Heir of the *Comitatus*, or of her Father's Estate. She married *Walter*, Son of *Allan of Foscelyne*, who is never designed otherways than *Dominus de Lennox*, and his Wife designed *Domina de Lennox*, because he was never *cinctus gladio Comitatus*, or invested in the Honour ; and for that Reason never used the Title of *Comes de Lennox* : The Peerage cited to vouch this Fact, says not that he was *Comes*, or any more than what is narrated here, viz. That *Donald* Earl of
Lennox

Lennox dying without Issue Male, the Earldom devolved to Margaret his Daughter and Heir, who married Walter Lord of Foscelyne, who in her Right became Lord or Dominus Comitatus de Lennox. Duncan Earl of Lennox their Son, obtained from King Robert III. a Charter of the Earldom of Lennox, and upon that being invested, he is Comes de Lennox. Under that Designation he gets a Charter of the Earldom of Lennox, upon his own Resignation, and to the Heirs-Male of his Body; which failing, to Murdoch Stuart, and to Isabel his Wife, Daughter to the said Earl, and to their Heirs. The Charter is in the Rolls, dated the 8th of November, 1394. But this Settlement never took Effect; for the Earl of Lennox himself was forfaulted for Treason against James I. in the 1426, and the Earldom came to the Crown. There is nothing in the Dutches of Albany's calling herself Comitissa de Lennox, since it was only Courtesy and a Compliment given by her to a Convent, to whom she was making a Donation and Mortification; and People in that Situation never quarrel by what Title their Donators call themselves: They indulge them in whatever Designation they affect; and although the Earl of Lennox, besides the Dutches of Albany, had two other Daughters, Margaret and Elizabeth; yet none of them claimed the Honour of the House of Lennox. Margaret was married to Robert Menteith of Ruskie; and Elizabeth to Sir John Stuart of Darnly. In Anno 1477, there was indeed a long Suit of Law betwixt John Lord Darnly and Agnes Menteith, Lady Glenagies, anent their Descent, and which of the two were descended of the eldest Daughter of Duncan Earl of Lennox. The Lady Glenagies makes an Appeal to the whole World, of the Seniority of her Grandmother, as a Thing well known. The Instructions of this are in the Hands of the Laird of Glenagies. But neither of them pretended to the Dignity; that was extinct and in the Crown, by the Forfaulture, as hath been said: Indeed King James III. gave the Earldom of Lennox, for Life, to Andrew Lord Evandale, by

a Charter under the Great Seal, the 4th of May 1471. *Book 8. Carta 179.* but though he had the whole *Comitatus*, he was not for all that Earl of *Lennox*, having never been created and invested in the Dignity ; and it is certain he enjoyed that Estate till his Death, in the Year 1488, for although the Lord *Darnly* once, and only once, usurped the Title of Earl of *Lennox*, during the Dispute betwixt him and the Lady *Glenagies*, yet he was forced to lay it aside, and return to his own Stile and Title of Lord *Darnly*, as we find him designed in the *fædera*, *Anno*, 1484, as a Conservator of the Peace with *England* : But after the Lord *Evandale's* Death, by the special Favour of King *James* the IV. in the 1488, he was created Earl of *Lennox*, and the 6th of *October* that Year he is marked in the Rolls of Parliament, *Johannes Comes de Lennox*, and never before. To conclude this Instance, it is certain, that the Forfaulture of *Duncan* Earl of *Lennox*, the common Ancestor of both the Lord *Darnly* and the Laird of *Glenagies*, was never reversed to this Day.

Earl of M A R.

THIS Earldom of *Mar* being one of the most ancient Dignities in *Scotland*, *præsumitur*, was at first erected in a Male-Heir, tho' it might have been afterward changed, and by the Settlements transmitted to Heirs-Female and of Line. *Thomas*, the last Earl of the Line of the ancient Earls of *Mar*, died without Issue, in the 1379, and Lady *Margaret Mar*, his Sister, became Heir to his Estate. She married *William* the first Earl of *Douglas*, not *James*, as he is through Mistake called in Mr. *Mackenzie's* Condescendences, who thereupon, as was usual in that Time, styles himself, *Comes de Mar*, as well as *comes de Douglas*, as we find him designed in many Charters, in the Rolls of King *Robert II.* which the Defender will not refuse. It appears as plain as any Thing can be, That the Honour was in the Earl of *Douglas* himself, and not in the
Lady

Lady his Wife, though the Estate was in her Person; for, after the Death of the Earl of *Douglas*, in the 1384, *James* his Son is designed *Comes de Douglas & de Mar*, in several Charters, in the Rolls of King *Robert II.* although his Mother was then alive, and who long survived him, and married a second Husband, Sir *John Swinton*, who calls himself *Dominus de Mar*, as appears by a Writ in the Hands of his Grace the Duke of *Queensberrie*, in the 1389. On the Death of the Countess of *Douglas* and *Mar*, she was succeeded in the Estate of the Earldom of *Mar*, by her only Daughter, Lady *Isabel Douglas*, who is not upon that *Comitissa*, but only *Domina de Mar*; and her Husband, Sir *Malcolm Drummond*, is only *Dominus de Mar*. There is a Charter in a single Writ, in the lower Parliament House, not in the Rolls, by King *Robert III.* ratifying and confirming a Grant, by *Robert* Duke of *Albany*, with Consent of *Murdoch*, his eldest Son, *dilecto filio suo Joanni senescallo, de tota & integra baronia de Coule*, dated the 18th of *February*, 1398, in which *Malcolmus de Drummond, Dominus de Mar*, is a Witness. This Lady being left by him a Widow, without any Issue, in the Year 1400, she makes Grants and Donations to the Episcopal See of *Aberdeen*, in *legitima viduitate*, in which she designs herself, *Isabella de Douglas, Domina de Mar*, but not *Comitissa*. After that, in 1404, in Contemplation of a Marriage with Sir *Alexander Stuart*, eldest Son to *Alexander* Earl of *Buchan*, she being then designed, *Comitissa de Mar*, resigns the Earldom of *Mar* in his Favours, *causa matrimonii contractus inter eundem Alexandrum & nos conferen*. The Charter is in the Registers, Book 8. Carta 238. Upon that he has got the *cinctura gladii comitatus*, a new Creation into the Dignity; and as *Comes de Mar*, in the 1406, is a Plenipotentiary for *Scotland*, authorised to treat with the *English*, concerning a Peace, as is mentioned in the *Fœdera Angliæ*. The Earldom of *Mar*, not the Courtesy, but the Property being in his

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Person, and his Wife dying without Issue, he resigns the *totum & integrum comitatum de Mar, & le Garioch*, in the Hands of King *James I.* in favours of Sir *Thomas Stuart*, his natural Son, and the Heirs-male of his Body, which failing, to return to the Crown. The Charter is in the Rolls, dated 28th *August* 1426. But the Son Sir *Thomas*, dying before his Father, without Issue, by Virtue of the former Settlement, it came to the Crown, on the Earl's Death, *anno* 1437, notwithstanding that *Robert*, then Lord *Erskine*, claimed the half of the Earldom, as Heir to Lady *Isabel Douglas*; and upon that he is stiled *Comes de Mar*, in Charters granted by him in the 1441. But the King, insisting that he was Heir of Provision to the last Earl, got Possession of the Earldom of *Mar*, which went through some younger Sons of the Royal Family, till the Lord *Erskine* revived his Claim, and got it allowed by Queen *Mary*, and had a Grant of the Earldom of *Mar*, by a Charter under the Great Seal, 13th *January* 1565, *de toto & integro comitatu de Mar, sibi & hæredibus suis, & assignatis, hæreditarie*, which must be constructed Heirs-Male, which is evident from many parallel Instances, as in *Strathern, Lennox, Bothwell, &c.* where it was understood in that Sense by our Law and Practice. And without all Doubt, the Earls of *Mar* thought so themselves; for *John* Earl of *Mar*, the Regent's Son, takes a Charter of the Earldom of *Mar, de toto & integro comitatu de Mar*, to himself, his Heirs-Male, and Assignies whatsoever, dated the 3d of *February* 1620. in the Records of the Great-Seal, Book 39. *Carta* 212. And the more to confirm this, there is another Charter in the Registers of the Great-Seal, of the Lands of *Blairforth, Bucclivy, &c.* to the said Earl, and to the Heirs-Male procreated, or to be procreated betwixt him and Lady *Mary Stuart*, Countess of *Mar*, his Wife; which failing, to his own Heirs-Male, and Assignies whatsoever. This shews the Anxiety the Earl had to vest his whole Estate, in the
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Channel of Heirs-Male, because they were to inherit the Honour of his Family, in Exclusion of Heirs-Female: For it cannot be imagined, That so wise and prudent a Man, as the Earl of *Mar*, the Lord Treasurer, would have taken the Investitures of his Estate, to one Species of Heirs, and the Honour to descend to another, if by *heredibus* in general, it had not been understood of Heirs-Male, and not of Heirs of Line.

Earl of *MENTEITH*.

WHATEVER Succession of Heirs-Female has been in the *Menteith* Family, in more ancient Times, it seems to have been by special Provision, in Failure of Heirs-Male; for from the Voucher of the Instance adduced by the Defender, the Peerage of *Scotland*, it appears, that an Heir-Male excluded an Heir of Line, in the Succession of that Dignity; for though *Allan* Earl of *Menteith*, who was slain at *Dupline*, left a Daughter, *Mary*; yet, her Father's Brother, *Murdoch*, succeeded to the Honour and Dignity of the House of *Menteith*; and upon his dying without Issue, she, by special Provision, and not, *jure sanguinis*, became Heir of the Estate; and her Husband, Sir *John Graham*, has got the Investiture, as was usual; for it is observable, That though this Lady is called *Comitissa de Menteith*; yet it is not till after the Death of her Husband, in the Year 1347. And so her Right of the Title of Countess was derived from him, as the Wife of an Earl. As for her Daughter and Heir, *Margaret*, it is Fact indeed, That she married *Robert Stuart*, second Son to King *Robert II.* while he was Earl of *Strathern*; and after his Father's Accession to the Crown, was invested, and created Earl of *Menteith*, in 1371. by Cincture, and other usual Solemnities of Investiture.

Earl

Earl of MURRAY.

IN the Year 1314. Sir *Thomas Randolph* gets the Earldom of *Murray* erected to him by King *Robert the Bruce* his Uncle, *in libero comitatu, & in libera Regalitate, Heredibus masculis de corpore suo legitime procreatis, seu procreandis, &c.* This established the Earldom upon his Heirs-Male: He was succeeded by *John Earl of Murray* his Son, who was slain at the Battle of *Durham*, in the 1346. leaving no Issue, so that the Earldom returned to the Crown, and the Honour became extinct. As the Earl's Sister, the Countess of *March*, had no Title to the Honour, so neither she nor her Husband, the Earl of *March*, had any Courtesy of it, or are they ever designed *comes* or *comitissa*, till the 1356. that, upon the Restoration of King *David*, he has been invested in the Honour of Earl of *Murray*, for Life; and upon that, he is in many Writs in the publick Rolls, designed *comes Marchiæ & Moraviæ*, which the Defender will not refuse: But it will not be pretended, that either the Earl of *March*, or the Countess his Wife, are ever designed by the Title of *comes* or *comitissa Moraviæ*, from the Death of the Earl of *Murray* her Brother, in the 1346. till the 1356. that King *David*, we say, being restored from his Captivity, he gave the Earl of *March* the Earldom of *Murray*, and that only for Life, since immediately after his Death, we find it in the Crown, when it is erected into an Earldom *de novo*, by King *Robert II. Johanni de Dunbar, & Marjoriæ, sponse suæ, filiæ nostræ carissimæ, de toto comitatu Moraviæ, exceptis terris de Lochaber, & de le Badenoch, cum castro de Urquhard, & baronia ejusdem, & eorum diutius viventi, & heredibus inter ipsos legitime procreatis, seu procreandis; quibus forte deficientibus, Georgio de Dunbar, comiti Marchiæ, & heredibus suis legitimis quibuscunque, in unum integrum comitatum, & in pura & libera regalitate; Reddendo servitium*

servitium duorum militum in exercitu nostro. This Charter is in the Rolls of King *Robert II.* and bears Date the 9th of *March*, the second Year of the King's Reign, *anno 1372.* This Earl of *Murray* had two Sons, *Thomas*, his Successor in the Honour, and *Alexander*, who is called Brother to the Earl, in the Cartulary of *Murray*. He married *Margaret*, Daughter and Heir of Sir *James Fraser* of *Frendraught*, and had a Son, *James Dunbar* of *Fendraught*, who afterwards succeeded as Heir-Male to the Earldom of *Murray*, in Exclusion of an Heir-Female. *Thomas* Earl of *Murray* is one of the Earls Mr. *Rymer* mentions in the *Fædera*, *anno 1423*, as concerned in the Transaction of the King's Ransom; he died without Issue-Male, and left only Daughters, one of whom, *Janet*, was married to *Hugh Fraser* of *Lovat*; but though the Earldom of *Murray* was erected to *John Dunbar*, & *heredibus suis* simply, as hath been observed; yet we see plainly what Heirs was thereby understood, *viz.* Heirs-Male; for the Heir of Line did not succeed to the Honour, but her Father's Nephew, *James Dunbar* of *Frendraught*. This is instructed from an original Contract belonging to the Lord *Lovat*, and mentioned by the Defender, in his Condescendences, Page 17th, dated the 9th of *August 1422*, and with this concurs a MS. History of the House of *Lovat*, written by one Mr. *Fraser*, a Minister in the *North*, in the Lord *Lovat*'s Hands. This *James* the last Earl of *Murray* died without Issue-Male, *anno 1430*, as appears from a Writ in the Earl of *Haddington*'s Collections; and though he left two Daughters, *Janet* who was married to Sir *James Crichton*, Son and Heir apparent to *William* Lord *Crichton*, who was Chancellor of *Scotland*, in the Reign of King *James II.* with whom he got the Barony of *Frendraught*; and *Agnes* the other, to *Archibald Douglas*, Brother to the Earl of *Douglas*; we see clearly, that the Honour was looked on in Failure of Issue-Male of the last Earl, to be extinct, and the Crown at Liberty to dispose of it where they

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pleased. It is not to be thought, if the Lord Chancellor *Crichton's* eldest Son, Sir *James Crichton*, and who was himself Great Chamberlain, had imagined that he had any Right of Courtesy to be Earl of *Murray*, but he would have pushed it, and assumed the Title; but that we say, being looked on as in the Sovereign's Disposal, King *James II.* bestowed it upon Sir *Archibald Douglas*, who was Husband to the Earl of *Murray's* second Daughter; and we find him designed *Archibaldus comes Moraviæ*, both in the *Fædera Angliæ*, and in a Charter in the publick Archives, dated the 25th of *August* 1447. Accordingly he enjoyed the Honour of Earl of *Murray*, till he was, together with his Mother the Countess of *Douglas*, and his two Brothers, *James* Earl of *Douglas*, and *John Douglas* of *Balveny*, all forfaulted for Treason, in the 1455, as is instructed by the Process of Forfaulture, led and deduced against them, in the black Acts of Parliament, *Folio* 34. 'Tis true, the Lady *Crichton*, the eldest Daughter of *James* Earl of *Murray*, after her Husband's Death, and the Forfaulture of her Brother-in-Law, in a Donation of Charity to the Monks of *Dumfermling*, such an Authority as it is, calls herself *comitissa Moraviæ & domina de Crichton*; but though the Monks of *Dumfermling* gave her the Title of Countess, and she, in that private Deed, assumed it to herself, she never had the Countenance of the Sovereign, the Fountain of Honour, calling her so in any Grant under the Seals; but so far from it, that, in a Charter to *James Crichton*, her Grandson, therein designed *Filio & heredi quondam Willielmi Domini Crichton*, of the Barony of *Frendraught*, resigned by herself, she is stiled no otherwise, but *Janeta de Dunbar Domina Frendraught, avia dicti Jacobi Crichton*. The Charter is in the Registers of the Great Seal, Book 13. *Carta* 71. and is of the Date 22d *November* 1493.

Earl of ORKNEY.

MALISE Earl of *Strathern*, though he might marry the Co-heir of the Earl of *Orkney*, that could not convey the Dignity to him, without an Investiture; and there is not the least Vestige in any Record, that he was ever Earl of *Orkney*, or that his Daughters had any Dignity in Right of Blood; and *Torpheus* says expressly, That Sir *Henry Sinclair* was created Earl of *Orkney*, by the King of *Norway*, in 1379. From an Instance of a foreign Creation, no consequence can be drawn in the present Competition.

Earl of ROSS.

HUGH Earl of *Ross*, who was slain at the Battle of *Halydonhill*, left behind him two Sons, *William* Earl of *Ross*, and *Hugh Ross* of *Rariches*, Ancestor to *Ross* of *Balnagown*. *William* Earl of *Ross* having no Issue-Male, only two Daughters, his Brother *Hugh Ross* was looked upon to be his Heir. Accordingly, in *Rymer's Fædera*, we find amongst the Hostages sent to *England*, in the 1351. there is *Hugo Ross frater & hæres comitis de Ross*. This Earl was prevailed on to alter the Investitures of his Estate, from Heirs-Male, and settle it on his Heirs of Line. Accordingly, he resigns his Estate, the Earldom of *Ross*, *totum comitatum de Ross*, & *dominium de Sky*, in the Hands of King *David II. in pleno parlamento tento apud Perth, tertio die mensis Octobris 1370. in præsentia Roberti senescalli Scotiæ, comitis de Strathern, Willielmi comitis de Douglas, Georgii comitis Marchiæ, Johannis senescalli comitis de Carrick, &c. tenend. & habend. eidem comiti dictum comitatum, & hæredibus masculis de corpore suo procreandis; quibus deficientibus, Waltero de Lesly militi, & Euphemix sponse sue, the Earl's eldest Daughter in Liferent, & hæredibus de ipsa*
Euphemia

Euphemia legitime procreatis seu procreandis ; ita, viz. quod si heres masculus de ipsa Euphemia non exierit, & plures de se habuerit filias, senior semper filia, tam ipsius Euphemie, quam suorum heredum de se exeuntium, habeat totum jus ad integrum dictum comitatum, sine divisione aliquali, &c. This Voucher, which is produced by the Defender, in the Instructions of his Condescendence, is a full Answer to the Instance itself. But further, it is observable, That though Sir *Walter Lestly*, and his Lady, the Earl of *Ross's* eldest Daughter, had full Possession of the Estate of the Earldom, he was never *comes de Ross*, but *dominus de Ross*, and she *domina*, Sir *Walter* the Husband, having never been invested in the Honour, which utterly destroys the Notion of the *Curialitas*. She calls herself no otherwise in her Widowity, than Euphemia *domina de Ross*, when she resigns the Thaneage of *Dingwall*, the Barony of *Kinedward*, and other Parts of the Earldom of *Ross*, in Favours of *Alexander* Earl of *Buchan*, her second Husband, and to the Heirs to be procreated betwixt them ; which failing, to her Heirs. The Charters on her Resignation, are in the Rolls, the one dated the 22d, and the other the 24th July 1384, upon that he has been *cinctus gladio comitatus*, and *de novo* invested in the Honour of Earl of *Ross*. For in anno 1389. he is stiled in publick Deeds, *comes de Buchan & Ross*, and after that, she as the Wife of an Earl, calls herself *comitissa de Ross*, after his Death, but never before, which makes it plain that an Heir-Female, though by special Provision, might enjoy the Estate of an ancient Earldom, yet they could not the Honour, *jure sanguinis*, till the Husband was created and invested by Cincture and other Rites of Creation. Upon this Lady's Death, in 1394, Sir *Alexander Lestly* her Son comes to be Earl of *Ross*, and under that Designation, grants several Charters to the Family of *Roths*, in 1398. He left a Daughter by his Wife, *Eupham*, Daughter of *Robert* Duke of *Albany*, who was prevailed

on to resign the Earldom of *Ross*, in favours of *John* Earl of *Buchan*, who, upon that, was invested in the Dignity, and is designed *Comes de Buchan & de Ross*. *Donald*, Lord of the *Isles*, quarrelling this Resignation, as elicite from her by undue means, in Prejudice of his Wife, who was Aunt to the young Lady, the Resigner, and the Heir of Line of the Earl of *Ross*. In pursuance of his Right, he fought the Battle of *Harelaw* against the Government, *anno* 1411. but neither he, nor *Alexander*, his Son are designed in any Record or Charter, Earls of *Ross*, for a long while after that; for it is plain, from several Charters, that *John* Earl of *Buchan*, the Duke of *Albany's* Son, enjoyed the Estate and Title of Earl of *Ross* till his Death, that it came to the Crown, *anno* 1424. To vouch this, there is a Charter in the Records of the Great-Seal, Book 3. *Carta* 91, granted by King *James* I. wherein the King, as *Comes Rossiaë*, grants a Charter *dilecto & fideli suo*, *Hugoni* Frazer de *Lovat*, of the Lands of *Golford*, &c. to be held of the King and his Successors, *Comitibus de Ross*, *penult* Day of *September*, and the 25th Year of the King's Reign, *Anno Dom.* 1430; so that *Alexander* Earl of *Ross*, when he comes to be designed *Comes Rossiaë*, it is plain to be a new Grant from the Crown, though we do not alledge that he had not a Right to the Earldom, by Provision, in the Charter of King *David Bruce*, in the 1371, to *William* Earl of *Ross*, his Great-Grandfather, to whom he was Heir in Blood.

Earl of STRATHERN.

THE Fact is granted, that King *Robert* II. gave the Earldom of *Strathern*, *comitatum de Strathern*, *carissimo filio suo Domino David senescallo militi, & hæredibus suis, in omnibus, & per omnia, sicut quondam Malifius, Comes de Strathern, ipsum comitatum juste tenuit, seu possedit.* *Apud Methfen, decimo nono die Octobris, anno regni nostri secundo,*

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1373. By the Sequel it will appear, that by *heredibus* was meant and understood *Heirs-Male*. We acknowledge, that after the Earl of *Strathern's* Death, during the Regency of the Duke of *Albany*, in a Time of great Confusion, when a Writer of that Time says, *There was no Law in Scotland, and Justice seemed to be banished out of the Kingdom*; the Regent allowed his Niece, the Lady *Eupham Stuart*, to enjoy the Earldom of *Strathern* after her Father's Death, to call herself *Comitissa Palatina de Strathern*, and the Gentleman, her Husband, *Sir Patrick Graham*, to design himself *Comes Palatinus de Strathern*; and the same Title the Lady used in her Widowity, after his Death. Their Son *Malise Graham*, was indulged the same Favour under the feeble Government of Duke *Murdoch*; for, by the Designation of *Malifius Comes de Strathern*, from the *Fædera*, he is one of the Hostages sent to *England* for the Ransom of King *James I.* anno 1443. But that Monarch, who was a Prince of Resolution and Courage, was no sooner restored, than he endeavoured to retrieve the Rights of the Crown, and thereupon resumed the Earldom of *Strathern*, as Part of the Royal Patrimony, since the Grant to his Uncle *David* Earl of *Strathern*, & *heredibus suis*, was understood by the Lawyers of that Time to be Male-Heirs only; whereupon he gave a Grant of this Earldom for Life, *carissimo patruo suo Waltero senescallo, Comiti Atholix, de toto & integro comitatu nostro de Strathern, pro toto tempore vite sue, vicesimo secundo die mensis Julii, anno Regni nostri vicesimo secundo, 1427.* We have here also the Authority of the learned Mr. *Buchanan* to support this Point, viz. That the Earldom of *Strathern* was given by King *Robert II.* to his Son and his Heirs-Male. The Words of that great Author, are, *Interea Malifius Gramus, a rege, dum in publicum patrimonium diligentius inquirat, est spoliatus, quod eum comperisset avo ejus materno ea lege datum, ut deficiente stirpe mascula, ad regem rediret, feodumque esset masculinum,*

culinum, ut interpretes juris nunc loquuntur. In answering this Article, it is further observable, that when the King gives the Earldom of *Strathern* to his Uncle the Earl of *Arbore*, he calls it *comitatum meum de Strathern*, and not on the Resignation of *Malise Graham*; which evidently shows it was then in the Crown, and at the King's free Disposal; and he did not give Mr. *Graham*, the former Earl of *Strathern*, the Earldom of *Menteith*, till several Years thereafter; and that Grant is expressly limited to the Heirs-Male of his Body. The Charter is in the Hands of his Grace the Duke of *Montrose*, dated the 6th of *September* 1428. It is true, That in the 1630, *William*, then Earl of *Menteith*, Lord President of the Council, and in a high Degree of Favour with King *Charles* I. was served nearest Heir of Blood and Line, to *Eupham*, called Countess of *Strathern*, and to *David* Earl of *Strathern* her Father, as no Doubt he was; but that could never give him a Right to his Dignity, which extinguished with himself, in Failure of Issue-Male. And for the Letters Patent, in the 1631, ratifying the Service, and the Title of Earl of *Strathern*, to the Earl of *Menteith*, it was all by special Favour, since it is evident he had no Title in Right of Blood, to the Peerage of *David* Earl of *Strathern*; and in the 1633. the Earl of *Menteith*'s Service was quarrelled and reduced, at the King's Instance, for Reasons of State, and upon an Error in Fact, That *David* Earl of *Strathern* died without Children; for he really and truly had a Daughter, to whom the Earl of *Menteith* was Heir of Line. The Reason why this Reduction was pursued with so much Earnestness, was occasioned by a Mistake in all our Historians, concerning King *Robert* II's. Marriage and Children, as if *David* Earl of *Strathern* had been the eldest lawful Son of that Prince, which is now sufficiently exploded from the many Charters extant, testifying the contrary, both in the publick Records, and in private Hands. The Earl of *Cromarty*, a great and learned Antiquary,

Antiquary, first set the Matter of the Legitimacy of King Robert III. in a true Light, which at once defeat the Pretensions of David Earl of Strathern, to be the King's eldest lawful Son, in a Treatise published by his Lordship, 1713. entitled, *A Vindication of the Legitimacy of King Robert III. from the Imputation of Bastardy.*

Earl of SUTHERLAND.

ELISABETH SUTHERLAND, Sister to John Earl of Sutherland, is served Heir to her Brother, who died without Issue, in 1512. but she is not designed, *comitissa de Sutherland*. The Lady did indeed marry Adam Gordon, Son to George Earl of Huntly: But he does not, upon his Marriage, assume the Title of *comes de Sutherland*; for there is a long while intervening betwixt his Marriage, and his being called Earl of Sutherland; so that it is plain that this noble Person has been, as was usual in many other Cases, invested in the Honour of Earl of Sutherland, by King James V. *per cincturam gladii comitatus*, before the 1527. that he is designed *comes de Sutherland*, in a Charter under the Great Seal of the Earldom; and the *Curialitas* that is there reserved to him, is not in Reference to the Dignity which was in himself by a new Investiture; but to the Estate of the Earldom, of which the Countess his Lady was full Fiar herself. The Charter is dated the 1st Day of December 1527. in the Registers of the Great Seal, Book 24. Carta 32. The Instance of the Earl of Sutherland affords an express and solemn Decision of the Court of Session, in Favours of the Lord Lovat the Pursuer; for in that Case, it was the principal Point insisted on for the Earl of Sutherland, that the Earldom of Sutherland had descended to the said Elisabeth, with the Dignity, as Heir of Line to her Predecessors: In Opposition to which it was determined by the Lords, in their Decisions, in 1706. *That*
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the Descent of the Dignity by Propinquity of Blood, from William Earl of Sutherland, who married King David's Sister, to Earl John, who succeeded in the 1512. was sufficiently instructed; but that the Dignity was not convey'd with the Estate to his Sister Elisabeth. Upon the Whole 'tis plain and evident, that though Elisabeth Sutherland, by her Service, as Heir to her Brother Earl John, did carry the Estate of the Earldom to her; yet the Right to the Title or Dignity did not accompany it; but that Adam Gordon, the Husband of the Lady, had a new Creation to be Earl of Sutherland himself.



